

## **MODEL PARTNERSHIP AGREEMENT**

The partnership agreement below has been carefully written to meet the specific needs of its two partners. For example, note the manner in which the partners have agreed to share and distribute profits. They have also agreed to pay themselves a monthly salary, an amount they will agree upon yearly. Note also the extensive provisions regarding partners' dissociations and buyouts of the partners' interests. They have tried to anticipate every situation so that they will have an agreement covering anything that might happen. By having a well-written, comprehensive agreement, they reduce the risk that they will have expensive disagreements in the future.

Because this agreement was written for these two partners, it may not meet the needs of other partners who want potential problems resolved in others ways. That will be especially the case for larger partnerships, in which management will be entrusted to a few partners, the compensation articles will have provisions for vacations and retirement contributions, and buyouts will be the standard rule when a partner dissociates.

It is important that the partners craft an agreement that works for them. They must carefully anticipate all the events that can happen during the lifetime of a partnership and draft an agreement that resolves issues in a way satisfactory to all partners. The partners must consider all the effects of any rule or provision they put in the partnership agreement and ask themselves, "Can we accept those consequences?" If not, they should revise the agreement to provide for results they can accept.

## **VERASCO & SMERTSON LLP PARTNERSHIP AGREEMENT**

This PARTNERSHIP AGREEMENT is made on August 31, 2003 between Heather C. Verasco and Ryan T. Smertson of Sacramento, California.

**1. NAME AND BUSINESS.** The parties hereby form a partnership under the name of Verasco & Smertson Associates LLP to conduct the business of business consulting. The principal office of the business shall be in Sacramento, California.

**2. TERM.** The partnership shall begin on August 31, 2003, and shall continue until August 31, 2033.

**3. CAPITAL.** Each partner shall contribute initial capital of \$30,000 to the partnership, in cash, on August 31, 2003. Each partner's contribution shall be credited to his capital account.

A separate capital account shall be maintained for each partner. Neither partner shall withdraw any part of his capital account without the consent of the other partner. No partner shall make or be required to make any additional contribution of capital, unless both partners agree to the additional contribution of capital. No interest shall be paid on the initial contributions to the capital of the partnership or on any subsequent contributions of capital.

**4. PROFIT AND LOSS.** The net profits of the partnership shall be divided equally between the partners and the net losses shall be borne equally by them. A separate income account shall be maintained for each partner. Partnership income shall be accounted for monthly and credited to a partner's account no later than the 10<sup>th</sup> day of the succeeding month. Partnership profits and losses shall be charged or credited to the separate income account of each partner. If a partner has no credit balance in his income account, losses shall be charged to his capital account.

On January 12, April 12, June 12, and September 12 of each year except for 2003, the amount in a partner's income account shall be distributed to the partners. At no other time may a partner withdraw the credit balance in his income account without the consent of all partners.

**5. SALARIES AND DRAWS.** Each partner shall be entitled to a monthly salary or draw in an amount determined by the unanimous agreement of the partners. The salary or draw shall be paid on the first day of each month beginning January 1, 2004. Partners shall not be entitled to a salary or draw in 2003. The monthly salary or draw for 2004 shall be \$5,000 per partner. On December 15 of each year commencing with 2004, the partners shall determine the monthly salary or draw for each partner for the succeeding year. If on December 15 of any year commencing with 2004 the partners are unable to reach an agreement on the monthly salary or draw for 2005 or any succeeding year, the most recently agreed upon monthly salary or draw shall continue until the partners agree otherwise. Any salary or draw paid to a partner shall be charged to the partner's income account.

**6. MANAGEMENT POWERS AND RESTRICTIONS.** The partners shall have equal rights in the management of the partnership business, and each partner shall devote his entire time to the conduct of the business. Without the consent of the other partner, neither partner shall on behalf of the partnership have the right or power to do the following acts:

(a) borrow or lend money, or make, deliver, or accept any commercial paper, or execute any mortgage, security agreement, bond, or lease,

(b) purchase or contract to purchase, or sell or contract to sell any property for or of the partnership other than the type of property bought and sold in the regular course of its business,

(c) hire or terminate any employee of the partnership,

(d) advertise or publicize the business of the partnership,

(e) engage in any act that is not in the ordinary course of partnership business.

**7. PARTNERS' AND PARTNERSHIP DUTIES.** Partners owe the following duties to the partnership and the other partners:

(a) Each partner shall manage the business in the best interest of the partnership.

(b) No partner may profit personally from transacting with the partnership without the consent of the other partner after full disclosure of his interest and benefit from the transaction.

(c) No partner may compete against the partners without the consent of the other partner.

(d) Partners shall act in good faith when transacting for the partnership, but in no case shall a partner be liable to the partnership or the other partner, unless the partner willfully or wantonly harms the partnership, personally profits from transacting with the partnership in violation of section (b), or competes against the partnership in violation of section (c).

(e) A partner shall be immediately indemnified for reasonable expenditures he incurs on behalf of the partnership, which expenditures are incurred while acting within the authority conferred on the partner by Article 6.

**8. BANKING.** All funds of the partnership shall be deposited in its name in such checking account or accounts as shall be designated by the partners. All withdrawals therefrom are to be made upon checks signed by both partner.

**9. PARTNERSHIP FINANCIAL RECORDS.** The partnership books shall be maintained at the principal office of the partnership, and each partner shall at all times have access thereto. The books shall be kept in compliance with generally acceptable accounting principles. Income and expenses shall be recognized on an accrual basis. All accounting decisions shall be agreed to by the partners. The books shall be kept on a calendar year basis and shall be closed and balanced at the end of each calendar year. An audit shall be made as of the closing date.

**10. PARTNERS' TRANSFERABLE INTEREST.** A partner has no right to transfer his partnership to any person. If a partner transfers any part of all of his interest and has not reacquired his partnership interest within 30 days of the transfer, the non-transferring partner has the right to expel the transferring partner from the partnership by written notice at any time prior to the reacquisition of the partnership interest. If a partner suffers a charging order against his partnership interest and has not extinguished the charging order within 30 days of its issuance, the partner not suffering the charging order has the right to expel the partner suffering the charging order at any time prior to the extinguishing of the charging order.

**11. PARTNER'S DISSOCIATION.** A partner is dissociation from the partnership due to the following actions or occurrences:

(a) death of a partner,

(b) withdrawal of a partner from the carrying on of the business of the partnership,

(c) expulsion of the partner in compliance with Article 10 of the partnership agreement,

(d) partner's filing a bankruptcy petition against himself,

(e) filing of an involuntary bankruptcy petition against a partner and the partner's failure to obtain dismissal of the petition within 30 days,

(f) adjudication by a court that a partner is unable to carry out his duties as a partner due to mental illness, disease, or disability.

Dissociations due to actions or occurrences in sections (a) and (f) above shall not be wrongful. Dissociation due to a partners withdrawing from the partnership shall be wrongful only if prior to the end of the partnership's term; otherwise withdrawal shall not be a wrongful dissociation. Dissociation due to actions or occurrences in sections (c), (d), and (e) shall be wrongful.

**12. CONSEQUENCE OF PARTNER'S DISSOCIATION.** Upon the dissociation of a partner, the surviving partner shall elect either to purchase the interest of the dissociated partner in the partnership or to terminate and liquidate the partnership business. If the surviving partner elects to purchase the dissociated partner's interest, he shall serve notice in writing of such election, within three months after the dissociation, upon the partner or the partner's executor, administrator, or guardian. If the dissociated partners is deceased and no legal representative has been appointed, the surviving partner shall service notice of his election upon any one of the known legal heirs of the decedent at the last-known address of such heir.

(a) If the surviving partner elects to purchase the interest of the dissociated partner and the dissociated partner has dissociated wrongfully, the purchase price shall be equal to the dissociated partner's capital account at the date of dissociation plus the amount in his income account at the end of the prior month, increased by his share of partnership profits or decreased by his share of partnership losses for the period from the beginning of the calendar month in which dissociation occurred until the end of the calendar month in which his dissociation occurred, and decreased by withdrawals charged to his income account during such period. No allowance shall be made for goodwill, trade name, patents, or other intangible assets, except as those assets have been reflected on the partnership books immediately prior to the dissociation.

(b) If the surviving partner elects to purchase the interest of the dissociated partner and the dissociated partner has not dissociated wrongfully, the purchase price shall be equal to the greater of either

(1) the amount in the dissociated partner's capital and income accounts calculated as in section (a) above or

(2) one-half of the value of the partnership. The value of the partnership shall be 30 (thirty) multiplied by the partnership's average monthly revenue for the 36 most recent calendar months preceding the dissociation.

(c) If the surviving partner elects to purchase the interest of the dissociated partner, the surviving partners shall pay the value of the dissociated partner's interest in equally quarterly payments for three years beginning on the first day of the third full month after the dissociation.

(d) If the surviving partner elects to purchase the interest of the dissociated partner and to continue the business, the surviving partner shall be entitled to use the trade name of the partnership. The dissociated partner shall not be entitled to use the trade name of the partnership, but may conduct business under his own name.

(e) If the surviving partner elects to purchase the interest of the dissociated partner and to continue the business and the dissociated partner has wrongfully dissociated, the dissociated partner shall be prohibiting from soliciting business from any customers or clients that were customers or clients of the partnership at the time of the dissociation or within two years prior to the dissociation. The prohibition shall continue for five years from the date of the dissociation. The prohibition shall apply only to business of the type the partnership provided to those customers or clients.

(f) If the surviving partner elects to terminate and liquidate the partnership, the procedure as to liquidation and distribution of the assets of the partnership business shall be the same as stated in Article 13 with reference to voluntary partnership dissolution and termination.

**13. VOLUNTARY PARTNERSHIP DISSOLUTION AND TERMINATION.** The partnership may be dissolved at any time by agreement of the partners, in which event the partners shall proceed with reasonable promptness to liquidate the business of the partnership. The partnership name shall be sold with the other assets of the business. The assets of the partnership business shall be used and distributed in the following order:

(a) to pay or provide for the payment of all partnership liabilities and liquidating expenses and obligations, including liabilities to partners as creditors of the partnership;

(b) to discharge the balance of the income accounts of the partners;

(c) to discharge the balance of the capital accounts of the partners.

**14. ADMISSION OF NEW PARTNERS.** No partners shall be admitted to the partnership without the consent of and under terms approved by all the partners.

**15. ARBITRATION.** Any controversy or claim arising out of or relating to this Agreement, or the breach hereof, shall be settled by arbitration in accordance with the rules, then obtaining, of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction thereof.

**16. EXECUTION.** In witness whereof the parties have signed this Agreement.

Executed this 31st day of August, 2003 in Sacramento, California.

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Heather C. Verasco

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Ryan T. Smerton